

**“ESTABLISHING RULES CONCERNING THE CONDITIONS TO BE MET  
TO EXERCISE THE PROFESSION OF ROAD TRANSPORT AGREEMENT  
THROUGH THE EUROPEAN REGULATION 1071/2009 UNDER GREEK  
LEGISLATION LAW 3887/2010”**

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By

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## **Dedication**

**To my Parents and my beloved Marianna.**

*Στους γονείς μου*

*Και στην Αγαπημένη Μαριάννα.*

### **Declaration**

This is to certify that this dissertation is the result of an original investigation. The material has not been used in the submission for any other qualification. Full acknowledgement has been given to all sources used.

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## **Abstract**

### **“ESTABLISHING RULES CONCERNING THE CONDITIONS TO BE MET TO EXERCISE THE PROFESSION OF ROAD TRANSPORT AGREEMENT THROUGH THE EUROPEAN REGULATION 1071/2009 UNDER GREEK LEGISLATION LAW 3887/2010”**

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This paper begins with an overview of the structure and efficiency of the road freight transport from 1976 until the current days. The aim is to highlight the legal changes through the legal acts. Furthermore, the European legal framework and the aspects of the creation of regulation 1071/2009 are prescribed through an overview of the restrictions on competition from the previous institutional framework, thus summarizing the institutional gap in Greece than in other European countries. The last chapters are dedicated to the interpretation of the Greek Law and its amendments on the basis of the change of the old legal status to the new, under the influence of EC 1071/2009. Finally, it is listed the main conclusions of this study and recommendations for further policy actions.

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## **A. Acronymic**

CPER	Center Planning and Economic Research
CMR	Convention on the Contrast for the International Carriage of Goods by Road
EU	European Union
FEIR	Foundation for Economic & Industrial Research
FOE	Federation of Enterprises
LLC	Limited Liability Company
LRH	Licensed Road Haulage
LRO	License of Road Operator
MTC	Ministry of Transport and Communications
NRT	National Road Transport
PTC – LLC	Peculiar Transport Companies- Limited
SA	Societe Anonyme
T.F.P.U	Trucks For Public Use
T.F.PR.U	Trucks For Private Use

## 1. Introduction

As it is commonly known, the roads constitute the driving force for the economical development, to the extent that it is considered identical to the existence of major road networks in order to result to an actual development.

Freight transport is an integral part of the supply chain and play an important role in shaping competitiveness of a market. According to the European Commission, transports and storage contribute between 10% -15 % to the total cost of the goods of European undertakings. Especially in Greek economy, road freight transport, in conjunction with the marine transport play a dominant role in internal movement of goods, due to the lack of alternative land freight (inadequate railway network, absence transport by rivers) and the particular morphology of the country (many islands and massifs). The institutional framework for road freight transport in Greece by the end of 2000 was characterized by intensive restrictions in competition<sup>1</sup>. In the latter, they were added high cost restrictions and as a consequence, it was observed an increase of bureaucracy in Greece <sup>2</sup>. Despite the harmonization with the Community's regulations and guidance on certain issues, e.g. the lifting of restrictions on cabotage, the maximum driving hours, etc., there were always significant legal gaps in the respective legislation to prevent such distortions, which obviously were created by the antiquated market regulations in order to ultimately release industry market regulations. The structural reform started with the framework Law 3887/2010 and recently was completed, creating fertile ground for the consolidation and per -growth industry with significant potential benefits for the entire Greek economy.

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<sup>1</sup> see eg Foundation for Economic & Industrial Research (FEIR) 2006, Federation of Enterprises (FOE) 2010 , Center Planning and Economic Research (CPER) 2011

<sup>2</sup> Doing Business Indicators, World Bank 2012

## **2. The previous European and Greek legal framework of the profession of road transport (analysis and comparison)**

The Basic Law that governed the National Road Transport (NRT) was Law 383/1976 "On carrying freight by lorry commercial vehicle and certain other provisions." This law defines the concept of NRT and individual distinctions, identifies persons authorized to engage in transport work, the conditions for authorization of commercial vehicles and establishes the manner in which the Ministry of Transport and Communications (MTC) determines rates which correspond to the freight truck commercial vehicle in Greece. With the previous Law, it had been already introduced a distinction of vehicles in public and private use.

The trucks are classified according to the gross weight and depending on their authorization. According to the first classification are divided into light trucks, which are those with a gross weight of up to 3.5 tonnes and heavy trucks which are lorries over 3.5 tonnes. Into the last category there is an extra further distinction into medium trucks: from 3.5 to 8.0 tonnes and heavy trucks over 8 tons. Also it can be met simply trucks, refrigerated trucks, garbage collectors, tankers, concrete mixers, etc. However, special mention must be made to the licensing regime of Trucks For Public Use (T.F.P.U) in Greece, and the status determination of rates of transport by lorry commercial vehicle from the Ministry of Transport.

Concerning the matter of providing licenses and especially regarding the admissions to the occupation of road transport operator shall be issued by the MTC and classified as follows: licenses for passenger trucks relating Truck Cars used exclusively on behalf of their owners and may not be exploited for transport of goods to third fare payment. A) The licenses which concern Trucks For Private Use (T.F.PR.U) are distinguished in turn: (1) professional for vehicles up to 4 tons, (2) in rural, for vehicles with a gross weight up to 4 tons, and (3 ) professional or agricultural vehicles over 4 tons. B) The Licenses which concern Public Use Trucks Cars relating Truck Cars exclusively used for transport of passengers under payment.

In the European Union (EU) and in the developed countries, there is strict governmental intervention which purports to increase the adherence to the principle of legality about the freight sector with trucks, ensuring under this confrontation the observance of safety rules during the transport of goods with trucks, whether concerns



the conditions for safe driving and specifications of vehicles and loads in order to ensure the rules of competition, to prevent accidents and to protect the environment. In developed countries, but also in many developing countries, the state has decided to stop the allowance of specific number of T.F.P.U which must circulate, while few states still retain some degree of control over the pricing of transport companies. The audit which existed to the 1970s in some countries concerned the entry of new Truck Cars in the industry, primarily for the protection of rail transport competition against Truck Cars. These checks, however, were removed from the 1960s and 1970s. Moreover, ensuring compliance with all the rules of legitimacy and safety of transport is so pervasive and so difficult, that in itself is a matter of great importance for the relevant government services.

Instead, the need of new licenses in Greece was based primarily on the principle of purpose and secondly on the principle of legality. It is assumed that state services only know how much is the required amount of transport project with T.F. PU in Greece and they are the only ones who decide how many Truck Cars can be offered for this project and at what price. Thus, a condition for the issue of new licenses T.F. PU is the ascertainment of increased total needs for freight services that would not be covered by existing T.F. PU. The ascertainment was made after market research carried out by a "Special Committee ".

According to Article 4, paragraph 3 of Law 282/1976, after consultation of Article 8 by the Commission, it was defined by annual decisions of the Ministry of Transport :

- a) the maximum - by category and type of Road Freight - of a total gross weight T.F. PU that it is necessary for the performance of Road Freight of the country, b) the allowance of new licenses T.F. PU to cover any difference between the existing and, in the preceding paragraph, to be determined up to an overall maximum gross weight for trucks, c) the criteria for the grant of new licenses to transport operators, professional drivers and professional drivers, based on criteria and conditions set out therein and even 80 % in transport companies and 20 % to the other. The criteria for the allowance of these new licenses taken into account, where appropriate, the number of the transport organic businesses, combined with the activity, the percentage of professionals motorists on the occupied truck car and time effective service for drivers.

But the matter does not seem to stop here. According to the present practice, the Greek authorities seem to appreciate that the service needs of NTRs in Greece have not changed since 1976. The failure to grant new licenses is certainly overt protection of legal and natural persons who hold licenses given to since 1976 and it consists a policy against both young people who fulfill their basic legal and substantive requirements to be licensed professionals, and the country's economy and society. In a study of Centre of Planning and Economic Research (CPER<sup>3</sup>) it is emphasized that the non-issuance of new licenses is not the result of implementation of existing legislation under which the competent Commission carries out the annual surveys and finds that there is or there is no need to grant new licenses T.F. PU because such studies did not occurred until 2005. Thus, each government would simply note the absence of a study to determine the need for new licenses and decides not to issue new licenses.

From other sides it is emphasized that studies are concluding that there is no need for new licenses. Also, the trade union sector of carriers occasionally decide that the existing licenses of T.F. PU are sufficient to cover twice the transport demand from the existing. Typically the president of the Panhellenic Syndicate Land Freight (PSLF) emphasized that it can not be denied by anyone that trucks today are much more than those are trully needed (2009). Thus, the same syndicate decided at the same time, that there is no need for specific studies or to issue new licenses T.F. PU.

Nevertheless, while not granted new licenses, there is quite an effort from the state services of enabling those professionals involved in the "closed" this profession to exploit the industry under state protection since they have the option to go to replace old vehicles with new vehicles, thereby increasing the overall capacity of the industry and thereby without the competence of Committee of MTC to reach a conclusion about the relative necessity. In particular, the current system allows the holder of a license T.F. PU to replace the old truck with a new and bigger as to significantly increase the capacity of the vehicle, replacing, for example, a trailer with more. Also, licenses are transferable directly by the current owners. If a citizen has the skills and want to operate in the field of Road Freight it can purchase one of the existing license

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<sup>3</sup> "Barriers to the free operation of the professions, and to execute business initiatives and competitiveness", CPER, 2001.

by paying the holder the price formed on the market of supply and demand. In the state, the new owner only pays a small fee to transfer a license.

However, unlike those that supported the needs of NLTs were rapidly increasing in Greece, and covered primarily by Truck For Private use. Thus, while the dominant practice of business worldwide are now turning to specialized, well-organized businesses to offer wide range of services, which cannot offer the same competitive manner (outsourcing), in Greece businesses are required to keep their own TFPrU, which are often a much more expensive option than that which might have been if there were no restrictions on increasing the licenses over new T.F. PU. This negatively affects the efficiency and competitiveness of Greek businesses and is probably the most negative consequence of Greek T.F. PU licensing system.

With the release of the industry T.F. PU, many businesses now have to buy their own TFPrU while they will turn to buy T.F. PU and especially those who have organized efficiently and offer a high level of specialization in logistics. That liberalization will increase the demand for T.F. PU as they will operate more efficiently than TFPrU and so it will bring an incentive to T.F. PU in order to be better organized and more efficiently for the benefit of their users.

A key feature of the industry of T.F. PU in Greece is the small number of Truck Cars that have joined companies despite the incentives established for the creation of large transport companies. Thus, according to a study of CPER, 2000 vehicles were organized in any form of a company over two Truck Cars, totaled 5,784 and accounted for 15.3 % of the total. This means that the current (before the Regulation 1071/2009) restrictive system failed in one of its key objectives, namely the creation of large transport companies, which are more efficient in the execution of transportation work by small companies and individual operators.

### **3. The European legal framework and the aspects of the creation of regulation 1071/2009.**

The conducting of public road transport goods flows governed by rules of state intervention for the purpose of achievement, especially traffic safety and to ensure systematic and planned transport goods for serving the population. A form of interventionism is a particular status with a prior authorization exercise on transport activities <sup>4</sup>.

What is also needed to have in our mind, is that under Title VI of the Treaty on the Functioning of the European Union<sup>5</sup>, which governs the transport<sup>6</sup>, which includes provisions of primary Community law, it establishes, firstly, obligation to pursue the objectives of the Treaties in a common culturement transport. This policy seeks primarily to ensure liberate course competition and the introduction of equal access to exercise activity in the transport sector<sup>7</sup>.

In recent years, the unions of the industry of road transporters could no longer prevent the occurrence of a significant part of the transport work of NTR in Greece from truck cars belonging to neighboring countries of the EU or truck cars belonging to Greek companies established in EU countries and the licensing concerning TFPU to be provided by keeping only the principle of legality and without any reference to the principle of expediency. The Community Institutional framework that allowed these developments is analyzed below.

Admission to the occupation of carrier NTR in the EU is governed by the EU Directive 96/26 which sets quality criteria (good reputé, professional competence and financial standing of carrier) in order to grant the permit. This framework was amended in 1998 by Directive 98/76/EC, which introduced stricter entry criteria in the industry. Moreover, the EU Directive 96/53 establishes common technical specifications and dimensional weight applies to vehicles in the national movement of each Member State and the Commission Regulation 561/2006 sets maximum working

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<sup>4</sup> see Law 383/1976 . A. See Chianti - Pampouki , Elements of Law in land and Legislative Texts , second edition , 1989 , pp.26 et seq )

<sup>5</sup> consolidated version , EE C 83/30.3.2010 , pp. 47 et seq

<sup>6</sup> Article 58 §1 of the Treaty on the free movement of services in the field of transport , which refers to Title VI of the Treaty and Article 4 § 2G

<sup>7</sup> see V. Skouris, Interpretation of Treaty on European Union and the European Community, 2003 pp. 667 et seq.

time for drivers of trucks per day (9 hours or 10 in exceptional circumstances) and fortnightly ( 45 hours per week ) as well as rest periods .

The EU has given special emphasis in the road transport sector over the past decades due to the need for enhancing the efficiency of the industry and the direct relationship with road safety and the environment. These measures concern the definition of rules for market access, transport safety and finally protection of the environment. It also sets rules on the taxation of TFPU (registration tax, ownership tax and vehicle acquisition and usage fees).

In particular, the EU member countries, on May 2006, had in their legislation large differences in charges for the use of roads and tolls for lorries, leading to distorted competition and also observed the phenomenon of many heavy vehicles to choose an alternative, longer routes to avoid countries with high tolls. So the trucks do not follow the optimal route in terms of minimizing the delivery time of goods and environmental impact.

The EU in order to correct these distortions and create a possible more unified market for heavy trucks and to incorporate the negative external economies (such as environmental and social costs ) to charge for road use, imposed a single charging system for heavy vehicles which determines the charge depending on how and when to use the roads. This system was called Eurovignette. Also, since 2010 the EU defines as 'heavy ' trucks those over 3.5 tonnes and not those over 12 tonnes as applicable now, while part of the revenue from these charges is for the development of alternative means of transport, to reduce the share of road transport and increase in other land transport (railways) and waterways.

From 1990 to 1998, cabotage<sup>8</sup> in truck cars was allowed but always was subject to the granting of an annual number of licenses cabotage for each Member State (quota). The greatest interest in these licenses showed the major firms that provided high quality services. In low-cost countries such as Greece, Spain and Portugal, only 2 %

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<sup>8</sup> It means the "coastal navigation, especially within the borders of a country," the carriage of goods or passengers between two points in the same country. The Cabotage is commonly used as part of the expression «Cabotage rights" refers to the right of a company from one country to act trade in another country. This right had previously undergone significant limitations, some of which are still valid today.

of total transport was made under cabotage<sup>9</sup> although possessed 16% of permits cabotage.

The cabotage for truck cars were fully released on 01.07.1998. Thus, the operator of each Member State of the EU, if it fulfills the conditions of entry to the profession and has been authorized by a Member State, can operate on a temporary basis and without quantitative restrictions, national road haulage services in another Member State without having a registered office or other facility<sup>10</sup>. Also, a carrier can transport goods between two destinations within a country member of the EU, which is not the country of origin. Thus, a Greek carrier may, for example, to load a cargo from Greece to Spain and back in order to not return the vehicle empty, can carry a load of Spain and to deliver it in another city of before returning to Greece. It is clear, thereby that by this way it has been increased the productivity of vehicles - transporting cargo within the country rather than return empty - and also reduces the environmental impact. However, in 2006, cabotage in the EU were only 0.78 % of total national road transport, while in Greece were only 0.26 %.

It must be underlined, that the temporary character of cabotage services and the problems raised regarding the interpretation of what is "temporary": In an Interpretative Communication EU clarifies, among other things, that cabotage must: a) be made within a period to be determined by each member country. In Greece, according to the circular of 08.12.1998, the maximum time limit for cabotage operations was two months a year. However, a circular of 19.4.2000 is no longer listed maximum time limit but defined the concept of temporality and the carrier must be able to prove that the vehicle left the Greek territory at some time and at least once a month. In Greece not yet active trucks from countries: Czech Republic, Estonia, Lithuania, Latvia, Hungary, Poland, Bulgaria, Romania, Slovakia (data European Commission, May 2008). b.) Do not be continuous, ie in a given period, a carrier does not only perform cabotage. c.) Do not be systematic but occasional. In this case given to the type of relationships with customers - regular or occasional - established in the State which carried out cabotage.

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<sup>9</sup> Foundation for Economic & Industrial Research (FEIR),2006

<sup>10</sup> Regulations No 3118/93/EC and 12/98/EC.

Greece has complied with the provisions of the EU and is binding on the occupation of road haulage operator cause of the principles of EU in a manner to abolish restrictions that existed on freedom of establishment and on freedom to provide services, and the policy of tariffs on intra-EU transfers and has brought the drivers' working conditions, charges and specifications of vehicles in a common European level. Nevertheless, it continues to be the only Member State of the EU which maintains strict quantitative barriers to entry into the profession of the carrier and is the only country along with Italy which continues to control the fixing of rates in case of national transport.

Recently, the intent of liberalization for the transportation sector emerged with laws 3887/2010, 4038/2012 and 4070/2012. These last decrees point to the right direction of liberalizing the market, but they still don't adopt a systemic approach in transport. The number of licenses for licensed road haulage (LRH) is now liberised, fare limits are abolished and transporters could be organized in SAs and LLC companies. This effort will assist the sector of freight transport in Greece in adjusting to international trends. Specifically, it includes new intentions, such as liberalization of freight transport, which practically implies that any person could obtain a LRH under certain conditions, increased competitiveness for advanced services at lower prices, abolishment of freight limits, which will be fixed between the lessee and the carrier, organization of transporters in companies, evaluation of the existing licenses, integration of transport, thus abolishing the separation of international and national transport, establishment of a national electronic registry for transporters with new vehicle inventory, compulsory insurance of goods by transporters, environmental issues with the use of modern engines (at least Euro 4 or above) and the recommendation of the National Committee on Road Transport (Law 3887/2010). Also, cabotage is enforced by the Greek State, which issues only a specific number of licenses to the interested foreign countries. That has led to the transshipment control and whatever creation of problems also in controlling the flow of goods. The liberalization of road cargo transport was supposed to increase the number of licenses road haulage, but the demand of transport loads has actually fallen, so the results of this initiative are still to be seen. Similarly, price results should appear when economy passes to inflation.

#### **4. Greek Legislation- Rules concerning the profession of road transport**

The EC 1071/2009 was integrated to the Greek Legislation with the Law 3887/2007 which was voted in the Greek Parliament on 28.09.2010 and it was published into the Greek Gazette on 30.09.2010. The Act originally provided the beginning of a transitional period between its publication until 30.06.2013 for the smooth transition from the old regime to the new one. While this was a big change for the Greek transporters and the greek services, which they were not ready for such a big transformation a new Act 4038/2012 diminished the above period almost a year and a half meaning that the period should finally take an end on 27.01.2012. This effected more than one case the profession of the transport operators because of two main reasons. First of all, there was a lack of information about the function and the crucial changes of the Law among the circles of transport operators so the public delayed to react in order to secure their economic and professional interests.

Secondly, the new law requires a large process of bureaucracy and the public services could not handle it <sup>11</sup> because in contrast with many European countries Greece could not offer the right services of high quality and quantity.

##### **4.1 Transportation Types.**

The national law recognizes two types of road freight: a) The International road freight carried by holders TFPU or Licencees of Road Transport and b) National road freight carried by holders TFPU or Licensees of Road Transport.

The legislature despite being aware of the need to harmonize our national law by overriding EU law and despite the fact that recently the EU has legislated in detail with the adoption of Regulation 1072/2009, which in fact does not introduce entirely new law, but repeats and organizes from 1992 onwards Community law establishes and after the transition period, which reaches up to the month of 27<sup>th</sup> of January 2012, the autonomy of the " public use trucks " that have the right to carry out public transport and 'license road transport . " It is evident that the legislator does not underline the terms under which the trucks will continue to have their public utility in

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<sup>11</sup> In North Greece the work of this transition was handled by the only public service Management of Companies in which a folder should be submitted by every professional in order to vest the gains of public utility trucks but simultaneously be assessed by the Committee established by Article 7 of the Law in order to be valued every kind of movable property business, which Committee was consisted reality by only two employees of the Department of Transport of Northern Greece.



a way to be considered as public utility trucks with independent right, distinguishable from the corresponding right to operate trucks for public use on the basis of the occupation of road transport permit .

However, given that there will be two categories of transport, national and international, it is necessary to have two types of permits public transport , namely national public transport permits and licenses international public transport. Under these conditions, the following provision of the law in which: "The companies that are licensed to conduct international road freight, have the right to conduct and national road transport, with the same license" is meaningless. The question arises will have the following form : A company that is licensed to conduct international road freight transport and therefore has the right to conduct and national transport with the same license , vehicles operated as what would be classified ? International As you have the right to conduct and national transport ? Or you have to classify two categories of vehicles, some for other national and international for ?

In this case the company will be able to organize the transport of work according to the rules of efficiency and effectiveness and in addition how to rationally utilize the fleet? Especially for businesses that have special and highly expensive equipment, as in the case of business involved in the transport of heavy and bulky goods, the continuation of such discrimination is and will remain a disaster.

We believe that each setting discriminatory and categories only bureaucracy can inflate only obstacles to the rational development of the industry of transportation can redress

## **4.2 The company types and transport undertakings allowed exercising the profession of road transport**

### **A. Company types**

The article 3 of the national Greek Law 3887/2010 concerning Road Transport Freight, illustrates exactly the following "It is authorized the establishment of transport companies in a form of Societe Anonyme (SA) or Limited Liability Company (LLC) in order to perform international, national, departmental and special transport services for one or more of these categories. Where there is no specific

regulation, it is applied the provisions of Law 2190/1920<sup>12</sup> and of the Law 3190/1955<sup>13</sup>, accordingly.

#### i) SA

One new element that the new law added was the possibility to establish a transport company in a form of S.A. Under the Greek law the S.A. must follow specific rules<sup>14</sup>. During the validity of this law, the founder or founders must concentrate a minimum amount of 60.000 Euros (save for specially regulated areas where share capital requirements are higher) and it must be deposited at a bank account during the setting up of the company. However, this amount may not always be in cash, it may also comprise of contributions in kind, such as real estate, etc. However, if part of the initial capital (maximum 50%) comprises of contributions in kind, an advance valuation should be carried out, according to article 9 of Greek Law 2190/1920. The Societe Anonyme (SA) is a limited liability company whose capital is divided into shares. The legal framework shaped by the Codified Law 2190/1920 " On Joint Stock Companies ", which was also the individual " Law of SA ." According to the SA Commercial Law it consists always a trading company even when not exercising marketing. For the recommendation should be concentrated threshold of share capital 24,000 euro<sup>15</sup>.

The SA must maintain certain formalities publicity, which protect bona fide third parties and traders. Within these is the annual publication of results in a specific way (i.e the Balance Sheet, the Income Statement and Results Mood respecting the Greek General Accounting Plan) in the Government Gazette and in a newspaper. In SA the share capital is divided into equal parts, the shares which are registered or unregistered, and are freely transferable, unless the statutes shall submit transferred to certain restrictions (earmarked shares). Each shareholder shall be liable up to the amount of the contribution.

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<sup>12</sup> Law about Societe Anonyme which it is implied analogically from the general provisions about companies.

<sup>13</sup> Law about Limited Liability Company

<sup>14</sup> The rules of the new Law 3604/2007

<sup>15</sup> In accordance with the Legislative Act of 12/12/2012 Official Gazette 240 A '.

In contrast to personal companies, the assets of this company are clearly distinguished from the assets of the founders/partners, due to the company's legal personality. This effectively means that the company alone is liable for its debts and obligations, with its own assets, whereas the partners' personal assets cannot be used for that purpose.

My point of view on this change is that the provisions of Law 3887/2010, which at their destination they wanted to provide incentives for the creation of new and stronger finest organized transport companies define "recommendation transport companies as a limited company (SA) or limited liability company (LLC) for the purpose of operating international, national, departmental and special transport services for one or more of these categories. While this is the spirit in the international field of transport our country Companies are invited to apply with full documents before the competent Directorate of Transport and Communications of the competent Regional Unit for the authorization of road transporter. In reality, after completion of the procedures for the establishment of the SA, a transfer vehicle of the old and the new company in order to replace the authorizations of company vehicles to indicate to them as a new owner of a company, the newly created SA, it is sought reconstitution of the contributed vehicle T.F.PU in uniform trains and re- split them into separate traffic units, a process that requires the inspection of all vehicles of the company , which may be scattered on a permanent basis throughout the Greek territory and syntax of the respective inspection practices and has administrative costs 500 euros per authorization.

It should indeed be noted here that, the reconstitution in uniform trains and reconnection of these independent traffic units along with the inspections is necessary for that purpose , do not in not serve the issues of safe movement of vehicles, which is guaranteed by the magazine 's annual technical inspection thereof. This process involves an additional cost ( cost of transporting the vehicle - and particularly the absence of capacity gaps - ie freight ships , fuel for transportation, tolls, personnel compensation for additional employment and employment outside the home , etc.), the amount of which is too high for a company based in Crete, for example and creates a huge problem in the operation of the company, as it is practically impossible to transfer all vehicles in Crete, since these can be found in various parts of Greece to meet specific needs capacity.

Following the above, what is particularly important, is to reduce bureaucracy and simplify procedures, while the sector faces strong competition from transport companies which have installed and operating in neighboring countries, where the procedures for setting up and operating their respective companies are simpler and faster, so that companies they certainly have for this reason a comparative advantage over companies operating in Greece.

## ii) LLC

Another type of company that the new law establishes is the limited certain liability company (LLC) in order to perform international, national, departmental and special transport services for one or more of these categories. The Limited Liability Company (LLC) as an institution that was established in Greece in 1955, while in Western Europe since the end of the last century covered a social and economic necessity for people dealing with business. The need was to run their own company, but be liable only up to the amount involved in this. Previously, traders used the form of a public limited company to conceal a family business.

The Limited Liability Company named certain persons involved. Each of these is only liable up to the amount of the corporate portion which cannot be represented by shares and may not be transferred unless all partners agree. Therefore, the limited liability company combined advantages of a partnership and limited liability companies, and no difficulty in establishing and dissolving and no minimum capital required in relation to previous legislation (Law 4156/2013 amending longer removes the minimum amount of capital for the establishment of LLC, which previously had been restricted by Law 4111/2013 to EUR 2.400)

The Limited Liability Company is managed by a general meeting of the members. The management of the company lies in principle to all partners, but certainly there is the possibility to appoint administrators, or administrator who is a partner or not.

The innovation introduced by the new law is as evident as we will see later by the withdrawn gradually of the PTC-LLC, since either no longer is allowed to create new or concerning the still existing is given by Law a timeframe existence of approximately nine years time.

The PTC is a foreign body in particular in Greek Company Law. Despite the wide diffusion in the transport sector, it has led to legal structures that are difficult to reconcile with the system of company law and cause uncertainty for counterparties. Furthermore the IME despite the dual nature as LLC is a partnership status unrecognizable on the European corporate - commercial law. According to the case law of the ECJ what makes this company to have a rather endearing profile as a company abroad, is the fact that its status is contrary to the freedom of establishment while the only partners who can hold them are only those who have under their ownership Greek T.F.PU. For all the above reasons, therefore, the Greek Legislature reconsidered the necessity of existence of that company and went through a gradual transition from the “peculiar” in company forms that are already exist both within the country and in the wider scope of the European Union.

#### **4.3 Legal type of transport undertakings**

Transport undertakings are Commercial companies under any type, in which first of all includes Peculiar Transport Companies- Limited (PTC - LLC) that meet the requirements of Presidential Decree 346/2001, along with those which have legal personality and in which has contributed to the ownership or the use T.F. PU. In Addition, the individual enterprises and the society<sup>16</sup> in the right-owners T.F. PU., which engage a single undertaking transport within the provisions of the cases of paragraph 1 of Article 1 of Law 383/1976. Finally the companies which were described above consist also a legal type of transport undertaking.

Since the entry into force of the Law 4038/2012, transport undertaking may be either natural persons or commercial companies law. The transport undertaking of another legal form which were in existence upon entry into force of Law 3887/2010 (eg PTC - LLC) still run on the same legal form until 27.01.2022.<sup>17</sup> It must also be underlined that the Law 3887/2010 provides that the entry into force of establishing a new PTC - LLC is not possible, since the provisions of the establishment of their formation (Law

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<sup>16</sup> Art . 61 of the Greek Civil Code and furthermore Kiantou-Pampouki, Elements of the law of the land transfer, 1989, p.32, Pampouki/Papadrosou-Arhaniwtaki, Commercial Law, Introduction – Fundamental Elements, 4<sup>th</sup> publication, 2001, p.141, Psihomani, Commercial Law, General Part, 2<sup>nd</sup> publication , 2007, p. 102 etc.

<sup>17</sup> Under para 1, 2 and 3 of Article 14 of Law 3887/2010 as amended.

383/76) are repealed by Article 15 of the Law 3887/2010. Also, it is not possible the inclusion into PTC – LLC of any T.F.PU property carriers which have entered the profession after the force of L.3887/2010.

#### i) PTC-LLC

The corporate purpose of the Peculiar Transport Company - LLC is in performing road freight. This finding is not clearly defined in the Law 383/1976, however indirectly resulting from the teleological, the definitions in Article 1 and the technical term carrier.

In contrast to common LLC where it can join any natural or legal person, the PTC-LLC<sup>18</sup>, as in other transport undertakings of Law 383/1976, involves only professional drivers i.e natural persons who operate lorry public use or legal persons - established professional motorists. The participation of these persons is directly linked to the granting of the concession exercise at least one truck in which each partner participates in the company. At the same time due to the collaborative nature is not permitted to establish single-member PTC-LLC<sup>19</sup>. The Law 383/1976 allows participation in PTC only to Greek citizens. But this restriction is contrary to the general principle of non-discrimination in the European Union Treaty that citizens of other Member States can participate as partners in PTC.

The above companies mentioned in article 3 of Law 3887/2010 may be co stand in the following ways :

1. Through a levy of ownership T.F.PU. a) In this case the capital of the Company, other than that contributed in cash is the value of the Managing vehicle (T.F.PU., trailers and semi - trailer) which are entering in the company and those which have a specific authorization and intangible goodwill of their licenses T.F.PU. The valuation of machinery and intangible favor-shock of their licenses T.F.PU, made notwithstanding Article 9 law 2190/1920 but by an Estimation of the Committee of Article 7.

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<sup>18</sup> Leontaris K. Miltiadis, *Personal Companies, LLC and Joint Vertues*, 2011, Publications Pamisos, p. 321 etc

<sup>19</sup> Opinion of the Legal Council of State, Legal Statement 1994, p.70.

b) Leasing a T.F.PU: In this case, the share capital must be paid in cash but also cannot be less than that provided as a minimum paid for the SA or the EPE. The parties who are owners and also who have lease<sup>20</sup> their vehicle, are required to contribute this exclusively to the company and for its function, towards a lease without a professional driver according to the prerequisites of PC 91/1988.

c) Along with a contribution of ownership of F.D.CH. and lease others, in accordance with subparagraphs a and b of para in paragraph 2 .

d) By setting up a business in accordance with the SA and EPE companies, provided that the requirements of the criteria for access to the occupation of road transport carrier are fulfilled according to PC 346/2001 and Conciliation 1071/2009.

2. The establishment of carriers in the form of SA or Ltd., if contributions of partners or shareholders, the transfer of cargo car or other assets, and the lease of a car – truck are exempted by any right in favor of the State or third and tax or fee, excluding tax fundraising. The provisions of this paragraph also apply to cases with inverter or merger transport companies operation before the effect of this, if they complete the conversion process into three years after the entry into force of this .

3. It is allowed the merger of transport companies, whether they operated before or after the entry into force of this Law 3887/2010.

4. Through the SA or Ltd., established before the entry into force, and those who will established or converted in accordance with the provisions of a Development Law 3299/2004, for the creation or modernization of facilities them, the purchase of land for the creation of storage spaces, parking lots and garages, the importation of telematics and of communications, the creating facilities for logistics applications chain, the procurement of machinery , especially lifter and affairs, to serve their needs, and replace their vehicles with new vehicles technology.

## **5. Licencing the transport operator**

**5.1 Prerequisites of Licensing requirements T.F.P.U article 4 of L.3887/2010 under the amendments of L. 4070/2012. (under the virtue of PD 346/2001 about physical persons)**

The prerequisites are included under the article 4 for the licensing of T.F.P.U. Specifically the article is setting down the following technical rules that must run cumulatively for a person or a company.

The person or persons designated as Transport managers of transport companies and are operating under the legal form of SA or LLC, must provide good repute within the meaning of Article 3 of the PD 346/2001. To have a real and stable establishment in a Member State. Also, each company or undertaking (the latter was added after the amendment of 4038/2012) must have the requisite of economic transparency within the meaning of Article 3 of Presidential Decree 346/2001. As it is obvious both prerequisites refer to the same article 3 of the PD 346/2001 which contains the technical requirements that the person, the company or undertaking must fulfill in order to enter to the profession of the road transporter, meaning to concentrate a good repute and not have been sentenced to a specific criminal offenses, to have adequate financial capacity meaning to have a healthy establishment which is followed by good and healthy management, to meet the requirement of professional competence meaning to have obtained the technical knowledge which is proved by the certificate of professional competence which is now provided by the authorities of the prefecture region.

Additionally, the companies under the legal type of SA or LLC must have an authorized manager transport in accordance with the provisions of Presidential Decree 346/2001.

The last prerequisite is about the facilities of the establishment of each company. Every company must have adequate and appropriate noun flow of vehicle parking and storage in accordance with the installations of the care and maintenance of vehicles due to the provisions of the Rules of EC 1071/2009.

As we can see the above requirements are inspired by the spirit of the EC 1071/2009 which designates an access to the occupation of road freight through a high level of professionalism, with certificates and other qualifications facilitating by this manner the realization of the right freedom of establishment in national and international transportation while it lays down minimum conditions on access to the occupation of road transport operator and mutual recognition of documents required for this purpose.



From the other side, the fact that the legislature continues to speak for licensing trucks for public use and not for the Community license transport operator with simultaneous application of standard and procedure of Regulation 1072/2009, in particular Article 4 thereof creates questions. The conditions, which calls for the filling, the legislature, are those of regulation, but in this fourth condition, there is a problematic transfer of the Rules.

Indeed, the condition set by the legislature for the first time with Regulation 1071/2009 in order to address the phenomenon of migration of transportation companies in the EU countries and the creation of many of them, each time for various reasons, whether relating the administrative status of the authorization or to tax reasons or reasons of ensuring a cheaper labor costs, transport companies, which otherwise has no meaningful relationship with the developing country, hosted in law or accounting firms who declare as seats and end are often inconsistent with the authorities of these countries, in terms of the fulfillment of their obligations. It is a condition under which there was a try to limit the phenomenon of so-called companies of mailboxes (Briefkastenfirmen). This condition, however, can not be transferred mechanically within our law, when not called into question the rigid connection of road transport in our country, as in the case in which a road transport operator is Greek, with permanent residence in Greece, having even practiced the profession for years. Management may form an opinion and to waive any bureaucratic burden carrier, for which in the circumstances of his life, no doubt about the stability of the connection with our country. The obligation introduced by the above cited circular formal declaration, lease, etc. superfluous, obviously.

## **5.2 Administration and licensing of road transport under article 5 and 6 of Law 3887/2010 and under the amendments of article 5 of the Law 4038/2012.**

At this point it is crucial to mention that there are not only semantic but also typical differences between the following terms: Licence of Road Operator (LRO) and Authorization to pursue the occupation of Road Transport Operator. The latter consists a precondition of the first. The LRO it is granted to the undertakings (meaning also the transport companies) and provides the possibility to operate public freights.

This term was firstly introduced under the provisions of Law 3887/2010 art. 5. We must underline the fact that this official permission is granted only to new undertakings (to persons or companies) which are entering the profession from 27.01.2012<sup>21</sup> and by the same time set under circulation trucks which will undertake transport for hire or reward (TFPU) or with the procedure of Articles 4 and 5 of L. 3887/2010 (initial allocation TFPU) or after a transference. Finally, this official permission it is given in already existing transport companies which put into circulation new TFPU with the procedure of Articles 4 and 5 of Law 3887/2010.

Noted that granting L.R.O concern persons who are Greek nationals or nationals of a Member State of the European Union and Switzerland, Norway, Liechtenstein or to companies that have their headquarters in these countries and establishments in Greece.

The administration of L.R.O to natural persons who are nationals of third countries or third country companies is also possible under Article 1, paragraph 2 of the Law 3887/2010 only if it has concluded a bilateral agreement or road freight economic cooperation between Greece and was the third country in which the stipulation the potential of Greek nationals and companies to engage in the activity of road freight transport in the territory of another Member. So with this possibility we assume that the framework of the road freight of the Regulation can be expanded beyond the EU frontiers.

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<sup>21</sup> Clarification on the application of Article 5 of Law issued by the Ministry of Infrastructures Transports and Networks, 16<sup>th</sup> of March 2012.

The only Public Service which has the authorization to grant the LRO is the Ministry of Infrastructures Transports Networks.

## **6. The liability of the road transporter for international and national transportation**

The legal nature of the contractual liability of international road transport is disputed not only at a theory level but also in jurisprudence of the Greek courts and the other Member States of the CMR. Indeed, the provision of Article 17 § 1 CMR provides for liability of the carrier for loss or damage to goods carried and for delay in delivery. From the above formulation does not follow directly the kind of its liability. The difficulty of determining the legal nature of the liability is due to the ambiguous wording of the text from which therefore cannot be diagnosed accurately. For this reason conflicting views has been expressed regarding the legal nature of international road transport. In one aspect the responsibility of international road transporter in the order is specified in the first paragraph of Article 17 and bounded in the second paragraph of the same Article thus reaches the damage caused due to circumstances which could not avoid and the consequences of which could not be predicted even if had paid higher degree of care. So the responsibility includes the usual gambling and reaching force majeure. In this view, therefore, the responsibility is with subjective presumption of fault or illegitimate objective in the sense that the plaintiff as a victim is burdened with proving the fault of the carrier. Therefore he bears the burden of proof (Article 18 § 1), where as in order to escape must invoke and prove that the damage was caused by one of the incidents mentioned in the provision of Article 17 Fri §2. However, this view acknowledges and strict liability of the carrier under Article 17 § 3 and exceptionally above the basic rule.

In another aspect, the liability of the carrier is genuine objective in the sense that it is independent of the existence of the fault. Thus is created a presumption of liability against him, from which it can be released only if the sender proves act of defective goods or force majeure. A third view advocates of strict liability of the carrier stresses, however, that in certain cases (Article 17 CMR) the contract makes the liability of the carrier of the fault. Therefore in order to operate the Exclusion of liability reasons the carrier must prove that he bears no fault. A new view holds that PSMR establishes

limited or impaired strict liability meaning liability without fault which has a ceiling and excluded for certain reasons stated therein . In essence establishes a gradient of strict liability. This view emphasizes that even the international legislature consciously was released than traditional liability systems in order to balance these contrasts.

Finally single view has argued that the liability of the carrier pursuant to Article 300 of the Greek Civil Code is subjective and does not extend to force majeure and gambling<sup>22</sup>. Therefore, the carrier is liable only if at fault. This view supports the position that Article 17 par 1 CMR not specify the type of liability should therefore be selected that is limited to the fault of the carrier due to various risks of transport.

The Greek law also appears divided on this issue. The majority of the decisions which are the prevailing view that this judge rigged strict liability. However, there is sufficient number of decisions determines that the carrier's liability is strict<sup>23</sup>. To support the above argument, the article 13 refers to the restitution of the transport operator's liability carrier, meaning that any transport undertaking shall have a real possibility of the loss coverage either from the net assets or full insurance coverage of the corresponding risks. Any failure of a transport company or undertaking to comply with the obligations of this Article, causes immediate deprivation of the right to exercise the occupation of road haulage operator from both the company and the shareholders / partners for a year and, in case of recidivism forever.

To this point we have to remark some interpretative issues. First of all, we can evaluate this article as an attempt to introduce to the Greek legislation the institution of compulsory insurance for civil liability. However, this attempt comes in a way that incites this institution, since it is laid upon to the discretion of the transport operator either to insure his liability or to cover the damage from the company sources.

Moreover, the legislature speaks for damage generally, without distinguishing between the positive and consequential damages, this fact may create problem to the determination of the sum of the liability.

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<sup>22</sup> Conference's Proceedings, Road transport, Current Matters, publications Sakkoulas2010

<sup>23</sup> Helena Gologina-Oikonomou, The liability in combined transportation of goods, National and International, publications Sakkoulas, 2010, pp.259

Finally, the law limits the liability of the transport operator only against the shipper. The shipper is not identical with the sender, but can be (and often is) a third company, which provides storage and supply services.

## **7. Conclusions**

The institutional framework for road freight transport before 2010 was characterized by significant barriers to market access and operation, having a significant negative impact on industry efficiency, competitiveness of the Greek economy and the environment. Distortions associated with the previous institutional regime imposed its revision. At the legislative level, the reform of the institutional framework of the industry began under Law 3887/2010 and has completed and ongoing adaptation industry in this. The new institutional environment for business road haulage is business-friendly and in line with international best practice and regulations of EU in-depth investigation of the effects of the liberalization of road freight transport is only subject to future research.

It is also noted that there is scope for further actions in order to reap the maximum benefits of structural reform in road freight transport. In particular, the international experience has shown the importance of strengthening market surveillance to ensure healthy competition to full liberalization of the sector. Moreover, given the sharp drop of investments in Greece, it is imperative the need to successfully complete the ongoing program National Council for Quality Growth for the modernization of enterprises in the road freight transport. New resources from the National Council for Quality Growth could be used directly to provide incentives to companies to withdraw TFPU old trucks and turn gradually to the market to meet the transport needs. Community programs could also be used in combination with attracting foreign investment high technology in order to realize development projects, such as investments in road, rail, ports, stations in storage and server centers. Finally, to ensure competitive conditions in land freight transport is necessary to take measures for the liberalization and development of rail transport. The complete coordination and timely completion of policies such as above will enhance the efficiency of freight and competitiveness of the Greek economy.



## **A. Notes**

## B. Literature

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